IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6306 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRANKUMAR KANTILAL KAPADIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 6306 of 2002

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MR MK PATEL, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/01/2003

ORAL JUDGEMENT

#. By way of this petition, the detenu has challenged

the detention order dated 14.6.2002 passed by the Police Commissioner, Ahmedabad City in exercise of the powers conferred upon him under Section 3(1) of the Gujarat Prevention of Antisocial Activities Act,1985 (hereinafter referred to as "the PASA" for short).

#. Along with the detention order, the detenu was also served with the grounds of detention. In the said grounds, there is a reference of one case, being CR No.1598/2002, registered on 11.6.2002 against the detenu under Sections 66(1)B, 65(a) (e), 81 and 116(1)(b) of the Bombay Prohibition Act. It is also alleged against the detenu that, he has brought 910 bottles of Indian made Foreign Liquor and certain bottles of beer, in all, amounting to Rs.1,36,400/-, as well as mobile phone worth Rs.6000/- and one Marshal Jeep worth Rs.4,00,000/-. As per the detention order, the detenu is carrying and selling the liquor illegally and he is also acting in a high-handed manner and beating the people, and, accordingly, he is disturbing the public order. The said order is challenged by the detenu on various grounds.

#. It is submitted that, pendency of one case against the detenu, ipso facto is no ground to detain the detenu by way of preventive detention. It is submitted that, there is nothing on record to show that so called alleged activities on the part of the detenu are disturbing the public order or the public health, in any manner.

#. On the other-hand, Mr.Patel, learned AGP, supported the reasons given by the detaining authority in the detention order. He submitted that the authority has reached the subjective satisfaction after considering the relevant material on record.

#. At this stage, reference is required to be made to the judgment delivered by the Division Bench of this Court in Letters Patent Appeal No.223 of 2000 on 22.8.2000, wherein in paras 4 and 5 the Court has observed as under.:

> "4. In this case of K.S. Zala v. State of Gujarat (supra), the Supreme Court also considered three earlier decisions in the case of Piyush Kantilal Mehta (supra) ; Omprakash (supra); and Rashidmiya (supra) and observed in para 4 that in none of the three cases relied upon by the learned counsel, the point whether public order can be said to have been disturbed on the ground that the activity of the detenu was harmful to the public health arose for

consideration and that the detaining authority has not recorded such satisfaction; moreover in these three cases the detaining authority has referred to some incidents of beating but there was no material to show that as a result thereof even tempo of public order was disturbed, whereas in the case before the Supreme Court in the case of K.S. Zala v. State of Gujarat (supra) the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. It was also stated that the statements of the witnesses clearly show that as a result of violence resorted to by the petitioner even tempo of public life was disturbed in those localities for some time. That material on record clearly shows that the members of public of those localities had to run away from there or to go inside their houses and close their doors.

5. If we examine the present case on the anvil of the test which has been applied by the Supreme Court in the case of K.S.Zala v. State of Gujarat (supra), i.e. with regard to the presence of credible material and as to how the detaining authority has made the mention against the appellant being an obstruction to the public health and public order, we find that in the instant case so far as the statements of the witnesses which were recorded with regard to unregistered cases, that ground has been rejected by the learned Single Judge himself. It is, of course, true that after narrating the particulars of the criminal cases, the detaining authority has mentioned that the activities of the appellant were an obstacle to the public health and public order, but this bald observation cannot be taken to be decisive so as to arrive at the satisfaction that the activities of the petitioner were prejudicial to the public order or public health and that tempo of public life was disturbed. No observation made in any part of the judgement can be read in isolation and bereft the context. The judgement is to be read as a whole and even the observations which have been made by the Supreme Court in para 6 of the judgement are to be considered in light of the earlier observations made in para 5 where presence of credible material before the detaining authority has been insisted upon.

Thus, litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. In the case of K.S.Zala before the Supreme Court, the detaining authority had also relied upon the statements of the witnesses so as to show that violence resorted to by the petitioner in that case had disturbed the even tempo of public life and the material on record had shown that members of the public of those localities had to run away from there and to go inside their houses and to close their doors. No such fact situation has been mentioned in the present case and the ground with regard to the statements of the three witnesses has been rejected by the learned Single Judge himself and it has been held that there had been violation or infringement of the petitioner's right against such statements. In this view of the matter whatsoever said by the three witnesses with regard to unregistered cases and with regard to the three incidents referred to hereinabove, it cannot be considered to be the material germane for the purpose of consideration of the threat to the public health and public order. Thus, the only material which remains is the registered criminal cases and that by itself cannot be said to be a material for the purpose of holding that the appellant's activities had become a threat to the public order and public health. Necessary material in this regard is totally wanting in the body of the detention order itself. In large number of cases, the Supreme Court has considered that involvement in bootlegging activities even if coupled with violence does not amount to threat to public order or public health. The mere mention of allegations unless they are supported by any material cannot be said to be material germane for the purpose of arriving at the satisfaction with regard to breach of public order or public health and we find that after giving particulars of criminal cases, the detaining authority by including certain allegations, not supported by any credible material has simply observed that the appellant's activities were an obstacle to the public health and public order. In this view of the matter keeping in view the observations made by the Supreme Court in the case of K.S.Zala v. State of Gujarat (supra) itself in paras 4 and 5, we do not find that it can be held to be a case of

breach of public health and public order."

#. Considering the judgment of the Division Bench referred to above, in my view, this petition deserves to be allowed on the aforesaid ground, as, it cannot be said that there is a breach of public order on the part of the detenu, which would justify the action of the detaining authority to detain the detenu by way of preventive detention. Similar view is also taken by this Court (Coram: C.K.Buch,J) in Special Civil Application No.4925 of 2002. Accordingly, this petition is allowed. The order of detention dated 14.6.2002 is quashed and set aside. The detenu Kirankumar Kantilal Kapadia is ordered to be set at liberty forthwith if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(P.B.Majmudar,J)
(pathan)